

REMARKS**I. INTRODUCTION**

Claim 1 has been amended. Support for this amendment can be found at least at ¶ [0028] of the published specification. Thus, claims 1-13 remain pending in the present application. No new matter has been added. In light of the above amendments and the following remarks, Applicants respectfully submit that all presently pending claims are in condition for allowance.

II. THE 35 U.S.C. § 103(a) REJECTION SHOULD BE WITHDRAWN

Claims 1-13 stand rejected under 35 U.S.C. §103(a) for being obvious over Magnus et al. (U.S. Patent No. 2,423,245) in view of Bosland (U.S. Patent No. 3,802,309) and further in view of Polley (U.S. Patent No. 2,951,140).

Claim 1 has been amended to recite, “[a] depilating apparatus comprising: a housing, which housing is designed to accommodate a supply of a depilating tape, wherein the depilating tape can be pulled away from the supply and can then be applied to the skin of a person, and the depilating tape, after application to the skin of a person, adheres to the skin along an application length, and application means for applying the depilating tape to the skin of a person, and an opening in the housing, which opening is provided and designed for passing the depilating tape through to the skin of a person, determination means for determining the application length along which the depilating tape adheres to the skin of a person, a heater for heating the depilating tape as the depilating tape is moved relative to the heater, wherein the heater comprises a control arm that protrudes therefrom and *a spring attached to the control arm having a home position that moves the heater away from the depilating tape*, wherein the determination means are designed to determine different application lengths as desired.”

The Examiner correctly acknowledges that combination of Magnus and Bosland fails to meet the claimed heater in claim 1. (See 3/3/09 Office Action, p. 2). In order to

cure this deficiency, the Examiner relies on Polley and asserts that Polley teaches the use of a heating device with a spring as recited in claim 1. Applicants respectfully disagree. The Examiner refers to spring 100 of Polley to meet the recited spring *having a home position that moves the heater away from the depilating tape*. However, it is lever 10 of Polley, not spring 100, that controls the movement of heater oven H. Polley explains that when lever 10 pushed forward in a counterclockwise direction, “the cam roll 97 rides up onto the concentric high or dwell portion 98 of the cam slot, tilting the rock arm 95 up at the rear end and down at the front end...turning the segment pinion 93 clockwise and with it the shaft 92 and gear segment 91. Accordingly the heater assembly H is bodily moved in to close proximity to the tape severing station 27,28.” (See Polley, col. 7, ll. 10-21). In order to retract the heater assembly H, the user must release hand lever 10, which comprises a return spring 50, preferably supplemented by tension spring 100. Polley explains that “both springs are tensioned during the forward or operational stroke of the hand lever 10 and on release of the latter contract and impart return motion to the parts including the heater-shifting train 90-97.” (See Id., col. 7, ll. 36-40). So, according to Polley, springs 50 and 100 bias the lever 10 to its original position, which in turn retracts the heater H. To further clarify the structure of the claimed invention, claim 1 has been amended to show that the spring is attached to a control arm which projects from the heater. Applicants respectfully submit that Polley fails to disclose or suggest that spring 100 (or 50) is attached to a control arm that projects from heater assembly H.

It is, therefore, respectfully submitted that Magnus, Bosland, and Polley, taken alone or in any combination, fail to disclose or suggest “*a spring attached to the control arm having a home position that moves the heater away from the depilating tape,*” as recited in claim 1. Thus, Applicants respectfully submit that claim 1 and its dependent claims 2-13 are allowable.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: April 27, 2009

By: 
Michael Marcin (Reg. No. 48,198)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, NY 10038
Phone: 212-619-6000
Fax: 212-619-0276